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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/632,892 | 07/31/2003 | C. Bret Elzinga | 6922.34 | 3057 |
| 7590 Kirton & McConkie Attn: David B. Tingey 1800 Eagle Gate Tower 60 East South Temple Salt Lake City, UT 84145-0120 | | | | |
| EXAMINER | | | | |
| UTAMA, ROBERT J | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 3715 | | | | |
| MAIL DATE | | DELIVERY MODE | | |
| 03/16/2011 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

| | |
|--------------------------------------|---------------------------------------|
| Application No. 10/632,892 | Applicant(s) ELZINGA ET AL. |
| Examiner ROBERT J. UTAMA | Art Unit 3715 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 February 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☒ Note the attached Information *Disclosure Statement(s)*. (PTO/SB/08) Paper No(s). 02/28/2011
13. ☐ Other: _____.

/XUAN M. THAI/
Supervisory Patent Examiner, Art Unit 3715

Continuation of 11, does NOT place the application in condition for allowance because: As discussed in the interview summary, 02/04/2011, the rejections on claims 1-5, 8-9, 12, 14-37, 39-55, 57-63, 65 and 67-70 under 35 U.S.C 112 first paragraph are hereby withdrawn.

With respect to applicant's argument on the special definition of the phrase "educational content" and "educational activity", the applicant argued the phrase "educational content" should be interpreted as something that the students learn and the phrase "educational activity" as something that the student perform". However, the applicant has not shown how this special definition would overcome the Krebs, Parry, Bull and Turner combination. Arguably, the Krebs reference both contain a "educational content" and "educational activity". Educational data that contains history, facts and scenario inherently have an educational content. Educational data that contains strategy, rule and checklist are inherently educational activities (see col. 5:25-30). Furthermore, both the Krebs and Frankenberg reference supports the idea that the term "educational content" and "educational activities" are separate entity; as it would be impossible to perform educational activities devoid of educational contents and vice versa.

With respect to applicant's argument that the combination of Krebs, Parry, Bull and Turner fails to provide a teaching of "selectively prioritizing the individually matched educational content and corresponding activities for presentation to the particular learner based upon the learner performance data that was obtained and analyzed by the computer system". The examiner respectfully disagrees. As discussed during the office action (10/27/2010); the applicant has not shown any special definition to the phrase "performance data". The Bull reference shows a computer system that can prioritize and select classes for an individual based on completed or attended classes. The examiner takes the position that "performance data" can be defined as data that shows past accomplishment or deed or feat. As such, the completed or attended classes data would meet this definition. .